

HOUSE BILL No. 2551

By Committee on Insurance

Requested by Representative Sutton

1-27

AN ACT concerning insurance; relating to third-party administrators; providing for pharmacy services administrative organizations and the regulation thereof by the commissioner of insurance; enacting the Kansas pharmacy services administrative organization act; for contracts between pharmacy services administrative organizations and independent pharmacies, PBMs and third-party payers; requiring certain disclosures relating to ownership; establishing certain requirements pertaining to appeals and audits; providing for penalties for noncompliance.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Sections 1 through 10, and amendments thereto, shall be known and may be cited as the Kansas pharmacy services administrative organization act.

(b) As used in sections 1 through 10, and amendments thereto:

(1) "Act" means the Kansas pharmacy services administrative organization act.

(2) "Commissioner" means the commissioner of insurance.

(3) "Department" means the Kansas department of insurance.

(4) "PBM" means any pharmacy benefits manager licensed to do business in the state of Kansas.

(5) "Pharmacy services administrative organization" means an entity operating within Kansas that contracts with one or more independent pharmacies to conduct business with third-party payers on behalf of such independent pharmacy to provide administrative services to the independent pharmacy and to negotiate and enter into contracts with third-party payers or PBMs on behalf of the independent pharmacy. Administrative services provided on behalf of one or more independent pharmacies may include one or more of the following:

(A) Assistance with claims;

(B) assistance with audits;

(C) centralized payment;

(D) certification in specialized care programs;

(E) compliance support;

(F) setting flat fees for generic drugs;

- 1 (G) assistance with store layout;
- 2 (H) inventory management;
- 3 (I) marketing support;
- 4 (J) management and analysis of payment and drug dispensing data; or
- 5 (K) provision of services for retail cash cards.

6 (6) "Pharmacy services administrative organization-pharmacy
7 contract" means a contractual agreement between a pharmacy services
8 administrative organization and an independent pharmacy under which
9 such pharmacy services administrative organization agrees to negotiate
10 with a PBM or a third-party payer on behalf of an independent pharmacy.
11 A pharmacy services administrative organization-pharmacy contract may
12 contain an agreement that the pharmacy services administrative
13 organization will provide other services to the independent pharmacy in
14 addition to negotiation with PBMs or third-party payers.

15 Sec. 2. (a) No pharmacy services administrative organization that
16 negotiates with PBMs or third-party payers on behalf of any pharmacy in
17 Kansas shall operate without obtaining a license from the department.

18 (b) The commissioner shall develop an application for licensure as a
19 pharmacy services administrative organization and may charge an initial
20 application fee of up to \$200 and an annual renewal fee of up to \$150. The
21 application shall include, but not be limited to, the following:

22 (1) The name, address and telephone contact number of the pharmacy
23 services administrative organization;

24 (2) the name and address of the pharmacy services administrative
25 organization's agent for service of process in Kansas;

26 (3) the name and address of each individual with management or
27 control over the pharmacy services administrative organization;

28 (4) the name and address of each individual or entity with a beneficial
29 ownership interest in the pharmacy services administrative organization;
30 and

31 (5) (A) a signed statement that, to the best of the applicant's
32 knowledge, no officer with management or control of the pharmacy
33 services administrative organization has been convicted of a felony or has
34 violated any requirement of state or federal law applicable to pharmacy
35 services administration, pharmacy benefits management or pharmacy
36 services; or

37 (B) a description of any felony or any violation of any requirement of
38 state or federal law applicable to pharmacy services administration,
39 pharmacy benefits management or pharmacy services committed by any
40 officer with management or control of the pharmacy benefits manager.

41 (c) An applicant or a pharmacy services administrative organization
42 that is licensed to conduct business in Kansas shall file a notice describing
43 any material modification of the information required to be contained in

1 the licensure application under this section.

2 (d) (1) Information contained in a report or disclosure required to be
3 submitted to the department by a pharmacy services administrative
4 organization pursuant to this act shall not contain the personally
5 identifiable information of any insured.

6 (2) Information disclosed pursuant to paragraph (1) shall be
7 confidential by law and privileged and shall not be subject to the open
8 records act, K.S.A. 45-215 et seq., and amendments thereto, or subpoena.
9 Such information shall not be subject to discovery or admissible as
10 evidence in any private civil action.

11 Sec. 3. (a) Prior to licensure under this act and within 10 calendar
12 days of any material change to such disclosure, each pharmacy services
13 administrative organization shall provide a written disclosure of ownership
14 to the department.

15 (b) Prior to entering into a contract with an independent pharmacy,
16 PBM or third-party payer, a pharmacy services administrative organization
17 shall provide such pharmacy, PBM or third-party payer a written
18 disclosure of ownership or control in order to assist the pharmacy, PBM or
19 third-party payer in making an informed decision regarding the
20 relationship with the pharmacy services administrative organization and
21 the pharmacy, including the pharmacy services administrative
22 organization's relationship with any independent pharmacy on behalf of
23 which the pharmacy services administrative organization is negotiating.

24 (c) A disclosure of ownership required under this section shall
25 include the extent of any ownership or control of the pharmacy services
26 administrative organization by any parent company, subsidiary or other
27 organization that:

28 (1) Provides pharmacy services or support;

29 (2) provides prescription drugs or drug services; or

30 (3) manufactures, sells or distributes prescription drugs, biological
31 products or medical devices.

32 (d) If a material change in ownership or control of a pharmacy
33 services administrative organization relating to any disclosure required
34 under this section occurs, then a pharmacy services administrative
35 organization shall notify the department and all relevant independent
36 pharmacies, PBMs and third-party payers of such change within 10
37 calendar days of such change.

38 Sec. 4. (a) Every pharmacy services administrative organization
39 pharmacy contract shall include a requirement that the pharmacy services
40 administrative organization provide to the independent pharmacy a copy of
41 any contract, amendment, payment schedule or reimbursement rate within
42 10 calendar days after the execution or amendment to such contract that
43 the pharmacy services administrative organization has signed on behalf of

1 such independent pharmacy.

2 (b) Each contract between a pharmacy services administrative
3 organization and an independent pharmacy, PBM or third-party payer shall
4 include the requirement that the pharmacy services administrative
5 organization update required disclosures in accordance with section 3(d),
6 and amendments thereto.

7 (c) No pharmacy services administrative organization shall require a
8 pharmacy to purchase specific amounts of prescription drugs, whether
9 generic or brand name, in order to access any discount.

10 (d) If a pharmacy services administrative organization-pharmacy
11 contract grants a PBM the right or obligation to conduct audits of an
12 independent pharmacy, then such pharmacy services administrative
13 organization-pharmacy contract shall contain language that permits such
14 PBM to obtain information from the pharmacy services administrative
15 organization in connection with such PBM's audit of such independent
16 pharmacy.

17 (e) A pharmacy services administrative organization-pharmacy
18 contract shall provide that all remittances for claims submitted to the
19 pharmacy services administrative organization by a PBM or third-party
20 payer on behalf of the independent pharmacy shall be passed through by
21 the pharmacy services administrative organization to the pharmacy within
22 a reasonable amount of time after receipt of the remittance by the
23 pharmacy services administrative organization from a PBM or third-party
24 payer. The reasonable amount of time required under this section shall be
25 established in the pharmacy services administrative organization-pharmacy
26 contract.

27 Sec. 5. A pharmacy services administrative organization shall not
28 discriminate on the price of drugs sold to an independent pharmacy based
29 on the price of drugs purchased from a wholesale distributor of the drug.

30 Sec. 6. (a) A pharmacy services administrative organization that
31 owns or is owned by, in whole or in part, any entity that manufactures,
32 sells or distributes prescription drugs, biological products or medical
33 devices shall not, as a condition of entering into a pharmacy services
34 administrative organization-pharmacy contract, require that the
35 independent pharmacy purchase any drugs or medical devices solely from
36 an entity with which the pharmacy services administrative organization
37 has an ownership interest or that has an ownership in the pharmacy
38 services administrative organization.

39 (b) A pharmacy services administrative organization that owns or is
40 owned by, in whole or in part, any entity that manufactures, sells or
41 distributes prescription drugs, biological products or medical devices shall
42 disclose to the department any agreement with an independent pharmacy
43 to purchase prescription drugs, biological products or medical devices by

1 an independent pharmacy from the pharmacy services administrative
2 organization or an entity with which the pharmacy services administrative
3 organization has an ownership interest or that has an ownership in the
4 pharmacy services administrative organization.

5 Sec. 7. (a) If there is a dispute between an independent pharmacy
6 and a PBM or third-party payer, then a pharmacy services administrative
7 organization that has entered into a pharmacy services administrative
8 organization-pharmacy contract with such independent pharmacy shall
9 ensure and facilitate timely communication between such independent
10 pharmacy and the PBM or third-party payer.

11 (b) If a third-party payer or a PBM provides notice or other
12 information to a pharmacy services administrative organization that is
13 related to an independent pharmacy with which the pharmacy services
14 administrative organization has entered into a pharmacy services
15 administrative organization-pharmacy contract, then such notice or other
16 information shall be considered provision of such notice or other
17 information to the pharmacy with which the pharmacy services
18 administrative organization is contracted. A third-party payer or PBM shall
19 not be required to provide notice or other information to both the
20 pharmacy services administrative organization and the independent
21 pharmacy with which the pharmacy services administrative organization
22 has entered into a pharmacy services administrative organization-
23 pharmacy contract.

24 (c) A pharmacy services administrative organization shall forward in
25 a timely manner all notices of appeals from an independent pharmacy with
26 which the pharmacy services administrative organization has entered into a
27 pharmacy services administrative organization-pharmacy contract to the
28 relevant PBM or third-party payer.

29 (d) If an appeal received by a pharmacy services administrative
30 organization from an independent pharmacy does not meet the minimum
31 requirements contained within a pharmacy services administrative
32 organization-pharmacy contract, then the pharmacy services administrative
33 organization shall deny such appeal and notify such independent pharmacy
34 of the denial, including the reason for such denial. If applicable, the
35 pharmacy services administrative organization shall allow such pharmacy
36 to resubmit the appeal for review by a PBM.

37 Sec. 8. (a) Any pharmacy services administrative organization that
38 fails to comply with the provisions of the Kansas pharmacy administrative
39 organization act, as determined by the commissioner, shall pay a penalty of
40 \$500 per day from the day the commissioner notifies the pharmacy
41 services administrative organization of noncompliance until the
42 commissioner determines that the applicable provision is met.

43 (b) Failure to comply with the Kansas pharmacy administrative

1 organization act may be grounds for revocation or nonrenewal of a license
2 under this act, as determined by the commissioner.

3 (c) Any violation of the Kansas pharmacy services administrative
4 organization act shall be considered unfair trade practice under K.S.A. 40-
5 2403, and amendments thereto.

6 Sec. 9. The commissioner of insurance is hereby authorized to adopt
7 all rules and regulations necessary to implement and administer the
8 provisions of the Kansas pharmacy services administrative organization
9 act. Such rules and regulations shall be adopted not later than January 1,
10 2027.

11 Sec. 10. This act shall be a part of and supplemental to article 38 of
12 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

13 Sec. 11. This act shall take effect and be in force from and after its
14 publication in the statute book.